

THE STATE OF NEW HAMPSHIRE

**BEFORE THE
PUBLIC UTILITIES COMMISSION**

DE 19-142

**PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE
D/B/A EVERSOURCE ENERGY
RATE RECOVERY OF COSTS IN EXCESS OF THE CUMULATIVE REDUCTION
CAP UNDER THE POWER PURCHASE AGREEMENT WITH BERLIN STATION, LLC**

**PETITION TO INTERVENE
ON BEHALF OF BURGESS BIOPOWER, LLC**

NOW COMES Burgess Biopower, LLC (“Burgess”) and pursuant to RSA 541-A:32 and N.H. Code Admin. Rule Puc 203.17, hereby petitions the New Hampshire Public Utilities Commission (“Commission”) for intervention in the above-captioned proceeding. In support of this petition, Burgess states as follows:

1. Burgess is a limited liability company organized under the laws of Delaware that now operates the biomass-fueled electrical generation facility, Berlin Station, LLC, located in Berlin, New Hampshire. Berlin Station purchased the position of Laidlaw Berlin Biopower, LLC, the original counterparty to a power purchase agreement (“PPA”) with Eversource, under which Eversource purchased electric power, including energy, capacity, and the associated renewable energy certificates, at agreed prices for a 20-year term.

2. The Commission approved the PPA in Order No. 25,213 (April 18, 2011) (“Original Order”) and then later amended it in Order No. 26,198 (Amended Order). The Commission issued the Amended Order to comply with a legislative directive contained in Chapter 340 of the Laws of 2018 (SB 577) “to suspend operation” of the so-called cumulative reduction factor (“CRF”), a provision in the PPA originally capped at \$100 million, “for a period

of 3 years from the date the operation of the cap would have otherwise taken effect.” *See* Laws of 2018, ch. 340:2.

3. On August 30, 2019, the Commission issued an Order of Notice to address “*inter alia*, issues related to whether, and if so under what rate recovery mechanism, Eversource may recover from ratepayers” certain costs or electric energy purchased under a power purchase agreement (“PPA”) during the period in which the cap is suspended.

4. The Order of Notice identifies certain statutory provisions along with provisions of the U.S. and New Hampshire Constitutions it deems relevant to resolving these issues, including RSA chapter 374-F, RSA 374:2, RSA 378:7, Laws of 2018 ch. 340 (SB 577), U.S. Const. art 1, § 10, cl. 1, N.H. Const. pt 1, art. 23, and N.H. Const., pt. 1, art. 37. Burgess asserts that its participation to any discussions related to the PPA in light of the above-identified provisions is both necessary and helpful to the resolution of any issues.

5. By this Petition, Burgess hereby seeks to intervene in the above-referenced proceeding pursuant to N.H. Code Admin. Rule Puc 203.17 and New Hampshire RSA 541 - A:32. The Commission’s Rule Puc 203.17 provides that the “Commission shall grant one or more petitions to intervene in accordance with the standards of RSA 541-A:32.” *N.H. Code Admin. Rule Puc 203.17*. RSA 541-A:32 provides for so-called “mandatory intervention” if the petition “states facts demonstrating that the petitioner’s rights, duties, privileges, immunities or other substantial interests may be affected by the proceeding or that the petitioner qualifies as an intervenor under any provision of law.” *RSA 541-A:32, I(b)*. The statute also sets forth a standard for “permissive intervention,” when “the presiding officer determines that the interest of justice and the orderly and prompt conduct of the proceedings would not be impaired by

allowing the intervention.” *RSA 541-A:32,I,(c)*. As discussed more fully below, Burgess satisfies both intervention standards and thus warrants status as an intervenor in this proceeding.

6. As operator of Berlin Station, the current counterparty to the PPA, Burgess’ “rights, duties, privileges, immunities and other substantial interests” are clearly and directly affected by this proceeding in that any decision by this Commission that analyzes the terms of the PPA in light of existing statutory or Constitutional provisions, or otherwise interprets or seeks to modify, in any way, the terms of the PPA, including but not limited to the operation of the CRF, necessarily implicate Burgess’ “rights, duties, privileges [and] immunities.”

7. Burgess asserts that, as operator of the Berlin Station biomass facility, it has a direct and substantial interests that can only be protected by its full intervention. Any issues related to the functioning of the CRF as well as interpretation of other salient PPA provisions will necessarily have a direct bearing on Berlin Station, and Burgess as its operator.

8. In addition to meeting the standard for mandatory intervention, Burgess also meets the requirements for permissive intervention. The interests of justice and the orderly and prompt conduct of the proceedings will not be impaired by allowing by Burgess to participate in the proceeding as an intervenor. *See RSA 541-A:32,I,(c)*. Indeed, Burgess’ participation may well aid the Commission in this docket since any discussions regarding the PPA necessarily affect and should include Burgess as operator of Berlin Station.

9. Accordingly, since Burgess has met the standards set forth in *RSA 541-A:32*, the Commission should approve its request for intervention.


10. Petitioner PSNH supports the relief requested in this Petition.

WHEREFORE, Burgess respectfully requests that this Commission:

- A. Grant it intervenor status; and
- B. Grant such further relief as may be just and proper.

Respectfully Submitted,

BURGESS BIOPOWER, LLC
By its attorneys,



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Dated: September 18th, 2019

Certificate of Service

I hereby certify that a copy of the foregoing Petition to Intervene on behalf of Burgess Biopower, LLC, has on this 18th day of September, 2019, been sent to the Public Utilities Commission by overnight mail and will be delivered by electronic mail to the service list in DE 19-142 on September 19, 2019, once physical delivery has been confirmed.

By: _____

Carol J. Holahan